

MEETING #38 October 25

At a Board Workshop Meeting of the Madison County Board of Supervisors on October 25, 2007 at 2:00 p.m. at the Madison County Administrative Center Auditorium:

PRESENT: James L. Arrington, Vice-Chairman
William L. Crigler
Bob Miller, Member
Clark Powers, Member
Lisa R. Kelley, County Administrator

ABSENT: Eddie Dean, Chairman
V. R. Shackelford, III, County Attorney

Vice Chairman, James L. Arrington the Board Workshop Meeting to order and a quorum was established.

The Board members first discussed the Planning Commission seats which will either become vacant or for which members' terms of office will expire.

Lisa Kelley, County Administrator stated that public notices have been advertised in the newspaper, inviting persons interested in serving on the Planning Commission to contact the Board of Supervisors' office. Applications will be collected from interested persons. Current Planning Commission members whose terms are about to expire, and who are willing and able to continue to serve have already notified the Board of Supervisors.

Vice-Chairman, James L. Arrington raised the issue of whether the number of seats on the Planning Commission should be reduced.

Bob Miller, Board member noted that the Commission had recently broken up into committees to begin reviewing the Comprehensive Plan, Zoning and Subdivision Ordinances, and that there may be a benefit to keeping a larger Commission in order to continue the work of planning within the County.

Lisa Kelley, County Administrator gave a presentation regarding the various ordinances adopted by other localities to deal with the issues of dogs running at large; dogs engaged in "nuisance" type behavior; and barking and howling dogs. Ms. Kelley also reported that the County's Animal Control Officers had transmitted a number of recommendations for consideration, among them: including a provision in the County's animal control ordinance for ACO-issued "confinement orders", and reinstating kennel licenses. After describing in detail the types of ordinance provisions utilized by

other localities, Lisa Kelley, County Administrator recommended the following: (1) further review of the ACOs request for confinement orders; (2) gathering more information about the location of complaints regarding running-at-large or “nuisance” dog behaviors, so that the BOS can consider, if they were to go forward with more restrictive ordinance provisions, whether the restrictions should be limited to specific portions of the County (like the approach taken by Culpeper, Greene, Albemarle, etc.). Ms. Kelley did not recommend adopting County-wide restrictions at this time, and cautioned against enacting any new ordinance provisions without consideration of the impact of enforcement of those provisions on the County’s budget for ACOs and Shelter operations; and (3) Ms. Kelley did not recommend pursuing noise ordinance provisions applicable to barking dogs, due to the rural nature of the community and the relatively small number of complaints of this nature.

MISCELLANEOUS ORDINANCE PROVISIONS:

DOG BEHAVIOR

Compiled by Lisa R. Kelley, County Administrator

“Running At Large”

Virginia Code §3.1-796.93: *“The governing bodies of the counties, cities and towns of this Commonwealth are hereby authorized to prohibit the running at large of all or any category of dogs in all or any designated portion of such county, city or town during such months as they may designate. Governing bodies may also require that dogs be confined, restricted or penned up during such periods. For the purpose of this section, a dog shall be deemed to run at large while roaming, running or self-hunting off the property of its owner or custodian and not under its owner’s or custodian’s immediate control....”*

Penalty: Violations of local running-at-large ordinances constitute Class 4 misdemeanors, punishable by a fine of up to \$250.00,¹ see Va. Code §3.1-796.128 and §18.2-403.3. For Class 1 misdemeanor penalty applicable to failure to control a dangerous or vicious dog, see Va. Code §3.1-796.93:1. Class 1 misdemeanors are punishable by up to 12 months in jail or a \$2,500 fine, either or both.²

Enforcement mechanism: issuance of a summons or warrant.³

Impoundment: Va. Code §3.1-796.96: *“The governing body of each county or city shall maintain or cause to be maintained a pound and shall require dogs running at large without the [required local license] tag...or in violation of an ordinance passed pursuant to §3.1-796.93 [prohibiting dogs from running at large] to be*

¹ Va. Code §18.2-11

² Va. Code §18.2-11

³ Va. Code §19.2-72, -73, -74

confined therein. Nothing in this section shall be construed to prohibit confinement of other companion animals in such a pound.”

Madison County: Animal Control Ordinance, Article V, Section I: *“Pursuant to Virginia Code Section 3.1-796.93 and 3.1-796.96 the Animal Control Officer may seize and confine any dog of unknown ownership found running at large without a license tag.”* Article I, Section II (DEFINITIONS)...*”RUNNING AT LARGE: A dog shall be deemed to run at large while roaming, running, or self-hunting off the property of its owner and not under its owner’s immediate control.”* Madison County also (1) prohibits the running at large of a female dog in season, requiring the dog to be confined [on an owner’s or custodian’s property], see Article V, Section II; and (2) prohibits dog owners from allowing their dog to go onto the land of another person and damage or destroy any garden, shrub, grass or other property, see Article V, Section III.⁴

Impoundment: addressed above—with respect to dogs running at large, Madison County’s ordinance only authorizes seizure and confinement [impoundment] for dogs of unknown ownership running at large without a license tag.

Orange County §6-166: *“The running at large of dogs within the entire county, not incorporated, is prohibited....a dog shall be deemed to be running at large while roaming or running off the property of its owner or custodian and not under the owner’s or custodian’s immediate control. Any person, after having been notified by any animal control officer or other officer of the law that the dog is running at large shall be deemed to have violated the provisions of this section....this section shall not apply to any person or persons while engaging in the following activities: (1) lawful hunting with a dog or dogs; (2) Law enforcement or search and rescue activity; (3) A supervised formal obedience training class or show; (4) Formally sanctioned field trials; or (5) Bona fide hunting or field trial dog training....”*

Impoundment: Orange County authorizes its officers to *“capture and impound”* any “companion animal” found running at large on which the license tax has not been paid. See §6-199(a) (technically, the term “companion animal” encompasses dogs as well as cats and other animals,⁵ but the caption for §6-199 reads “Unlicensed dogs.”)

Culpeper County §4-70: *“(a) No dog shall run at large in the county. Any person, after having been notified by any person, animal control officer, or other officer of the law that the dog is running at large in the county, shall be in violation of this section. For the purposes of this section, a dog shall be deemed to be “running at large” when off the property or premises of its owner, possessor or custodian and not under the control of the owner, possessor or custodian, either by leash, cord or chain....(b) This section shall not apply to any dog or pack of dogs, or any dog owner, possessor or custodian while engaged in (1) law enforcement operations or training, (2) search and rescue operations or training for such activity by the members of any agency or organization recognized by the county as a bona fide search and rescue operation, (3) lawful hunting and dog retrieval as provided in Title 29.2 and §18.2-136 of the Code of Virginia, 1950, as amended, or any field trial authorized by the Department of Game and Inland fisheries,*

⁴ The City of Charlottesville has a very similar ordinance.

⁵ Va. Code §3.1-796.66

or any lawful training or hunting or field trials, or (4) any formally organized dog show or competition, or any training in obedience or in preparation for any show or competition. (c) This section shall not apply in any Agricultural and Forestal district created pursuant to Article 8E of the Culpeper County Zoning Ordinance.”

Impoundment: not addressed in §4-70 (Dogs running at large).

Greene County §14-61(a): *“Dogs may run at large within the county unless expressly prohibited from running at large as provided in this section....a dog shall be deemed to run at large while roaming, running or self-hunting off the property of its owner or custodian and not under the owner’s or custodian’s immediate control....”* The types of “running at large” prohibited by Greene County are: (1) female dogs in season; (2) unlicensed dogs not displaying any license tags; (3) dogs, in such portions of the county, and during such months, as may be designated by the county board of supervisors in an ordinance; and (4) dogs within the area of some [32] subdivisions designated by the BOS in their ordinance, see §14-61(b)-(f).

Impoundment: not referenced in Chapter 14 (Animals).

Albemarle County §4-211 - §4-213: *“§4-211. Diseased dogs. It shall be unlawful for the owner of any dog with a contagious or infectious disease to permit such dog to stray from his premises, if such disease is known to the owner. §4-212. Female dogs in season. It shall be unlawful for the owner of any female dog in season to fail to keep such female dog confined beyond reach of any male dog at large. §4-213(A). In certain areas. It shall be unlawful for the owner of any dog to permit such dog to run at large at any time within the following designated areas of the county [38 listed areas: including UVA grounds and numerous subdivisions] .” §4-213(B): “For purposes of this section, a dog shall be deemed to be running at large while roaming, running or self-hunting off the property of its owner or custodian and not under its owner’s or custodian’s immediate control.”*

Penalty: Class 4 misdemeanor, see §4-1-1(B) and §4-315, *but* Albemarle limits the maximum fine to the following: \$5.00 - \$25.00 (for licensed dogs, see §4-213(B)) or not more than \$100.00 for unlicensed dogs, see §4-315.

Impoundment: Albemarle County authorizes officers to “capture, euthanize or turn over to the SPCA, any dog of unknown ownership found running at large on which the license tax has not been paid.”

Rappahannock County §65-9: *“Running at large prohibited. (A) It shall be unlawful for any owner or person responsible for a dog to allow any vicious dog to run at large anywhere in Rappahannock County, Virginia. (B) It shall be unlawful for any owner or person responsible for a dog to allow any destructive dog to run-at-large beyond the boundary of that person’s property.” (See also: “§65-8. RUN AT LARGE—A dog shall be deemed “running at large” when it is not physically confined or not held by a leash....”)*

Impoundment: Any dog which has attacked any person may be seized and confined in the pound. §65-14.1.

City of Charlottesville §4-38: “*It shall be unlawful for the owner of any dog to allow such dog to run at large, at any time, within the city, even though the dog is both lawfully licensed and vaccinated.*” (See also: “§4-2. DEFINITIONS...*To run at large or running at large means to roam, loiter, walk, run or be on or off the premises of the owner without being fenced, caged, physically carried, held by leash by a person thoroughly capable both physically and mentally [capable] of controlling the animal, or within the immediate voice control of the owner.*”)

Penalty: Class 4 misdemeanor, see §4-38, punishable by a fine of up to \$250.00⁶; however, upon a fourth conviction within 1 year, involving the same dog, the violation constitutes a Class 3 misdemeanor, punishable by a fine of up to \$500.00.⁷

Impoundment: not addressed with respect to “running at large” violations.

Dog Behavior Regulated Explicitly or Implicitly as “Public Nuisance”⁸

Miscellaneous:

Amherst County §3-30: “(a) *No owner or custodian shall fail to exercise proper care and control of his or her dog to prevent it from becoming a public nuisance. Acts deemed nuisances shall include but are not limited to the following: (1) Biting a person; (2) Chasing vehicles, or chasing or menacing a person upon premises other than that occupied exclusively by the owner or custodian of the dog; (3) Damaging or destroying property belonging to person(s) other than the owner or custodian of the dog; (4) Scattering, or causing to be scattered, garbage upon premises other than that occupied exclusively by the owner or custodian of the dog; or (5) Injuring or killing a companion animal as defined in Code of Virginia, § 3.1-796.66. (b) Any person violating this section shall be subject to a fine of not more than one hundred fifty dollars (\$150.00) for a first offense, and shall be guilty of a class 1 misdemeanor for a second or subsequent offense. (c) This section shall not apply to any person while engaged in law enforcement or search and rescue activity; in a supervised formal obedience training class or show; during formally sanctioned field trials; while engaged in lawful hunting with a dog or dogs during open season; during bona fide hunting or field trial dog training; while controlling or protecting livestock or engaged in other agricultural activities; or when the dog in question is contained within a vehicle. (d) As used in this section: Menacing means lunging, growling, snarling, or otherwise behaving in a manner that would cause a reasonable person to fear for his safety. Owner shall mean any person who has a right of property in the dog in question; keeps or harbors the dog in question; has the dog in question in his care; or acts as custodian of the dog in question.*”

⁶ Va. Code §18.2-11

⁷ Va. Code §18.2-11

⁸ Localities, in general, have the authority to enact ordinances to promote the health, safety and general welfare of inhabitants, including ordinances regulating activities that constitute public nuisances, so long as those local ordinances are consistent with the general laws of the Commonwealth. See, e.g., Va. Code §15.2-1200 and §15.2-900.

Bedford County §4-8: *“It shall be unlawful for the owner of any dog to permit such dog to case motor vehicles on a highway in the county.”* [Violations are a Class 4 misdemeanor, enforceable through issuance of a warrant or summons, per §4-1].

Barking or Howling:

City of Charlottesville §4-40⁹: *“(a) The harboring or keeping of any dog which, by loud, frequent or habitual barking or howling, shall cause annoyance and disturb the peace and quiet of any person or neighborhood is hereby declared to be a nuisance and unlawful. (b) Any person annoyed by loud, frequent or habitual barking or howling by a dog may enter a complaint by warrant returnable to the general district court, where the complaint shall be heard as all other complaints under criminal warrants are heard. Upon a finding by the judge that the dog involved is a loud, frequent or habitual barker or howler and causes annoyance and disturbs the peace and quiet of the complainant or neighborhood, the owner or custodian shall be deemed guilty of a Class 4 misdemeanor. Upon a third conviction within one (1) year of any offense under this section involving the same dog, in addition to imposing a fine for the violation, the judge shall order the owner or custodian of the dog to remove it permanently from the city within two (2) weeks. Should the owner or custodian fail to comply with such order, the dog shall be seized by the animal warden and humanely destroyed or placed for adoption out of the city.”*

Town of Berryville, §4-26: *“(a) It shall be unlawful for any owner of a dog to keep a dog without exercising proper care and control of such dog to prevent it from disturbing the peace of others by barking in a loud, continuous, unprovoked or untimely manner, after the owner has been notified of such disturbance. Owners of dogs shall be responsible for exercising control of such dog under this section. (b) Citizens affected by a barking dog are requested to contact the dog's owner, prior to contacting the town to attempt to resolve differences and objections with the owner of the barking dog. (c) A law enforcement officer may direct the owner of a dog found barking in a loud, continuous or untimely manner to exercise proper control and care of such dog to prevent it from barking in such manner. (d) A law enforcement officer on behalf of the town may institute criminal or civil proceedings against any person he finds in violation of this section. Citizens may institute their own criminal or civil proceeding to resolve a barking dog problem. [Violations constitute a Class 4 misdemeanor, per §4-30).”*

Town of Culpeper, §3-4: *“No person shall have or keep any animal or fowl which, by making or causing frequent or long continued and unreasonable noise, shall disturb the comfort and repose of any person in the vicinity. For the purpose of this section, a harsh or excessive dog or animal noise is one which disturbs the quiet, comfort, or repose of a reasonable person with normal sensitivities. Upon complaint being made to the county animal control officer and/or the town police that the provisions of this section are being violated, such officer may, after investigation, give notice of such complaint to the owner or person in charge of such animal or fowl and order the discontinuance of the*

⁹ The Town of Blacksburg has a similar “barking or howling dogs” ordinance, §5-202 of the Code of the Town of Blacksburg, although Blacksburg’s ordinance authorizes the Town Manager to initiate civil or criminal enforcement proceedings, and any citizen is authorized to initiate civil or criminal enforcement proceedings.

disturbance. It shall not be necessary for the police department or animal control officer to issue a new notice for each repeated occurrence. It shall be unlawful to fail to comply with such order. Notwithstanding the provisions of this section, harsh or excessive dog or animal noise emanating from any commercial kennel established prior to the development of any residential property upon which such sounds may be audible shall not be considered noises in violation of this section. A violation of this section shall be considered a class 4 misdemeanor.”

Prince William County, §14-5.1: “(a)It shall be unlawful for any person to allow within the county prolonged or intense barking or other harsh or excessive noises to be made by any animal under his ownership or control, at any time, so as to disturb the quiet, comfort or repose of one or more members of the community. (b) For the purpose of this section, a harsh or excessive animal noise is one which disturbs the quiet, comfort or repose of a reasonable person with normal sensitivities. (c) For the purpose of this section, a person shall be deemed to have "allowed" his animal to bark or create other harsh or excessive noises, if he has once been put on notice by the county police department or the animal warden, upon the complaints of two persons who are not members of the same household, unless there are no more than five households within one-quarter mile of the noise source, that the animal is disturbing one or more members of the community and he thereafter fails to confine such animal inside his dwelling unit or other enclosed structure or take similar action calculated to terminate such disturbance. It shall not be necessary for the police department or animal warden to issue a new notice for each repeated occurrence. (d) Notwithstanding the above provisions of this section, harsh or excessive animal noise emanating from any commercial kennel established prior to the development of any residential property upon which such sounds may be audible, shall not be considered noises in violation of this section.” [Violations constitute a Class 2 misdemeanor, per §14-2. Class 2 misdemeanors are punishable by confinement in jail for not more than 6 months, a fine of not more than \$1,000, either or both, see Va. Code §18.2-11]

William L. Crigler, Board member, had to depart the meeting at 3:30 p.m.; however, a quorum consisting of Clark Powers, James L. Arrington and Bob Miller remained.

The Madison County Board of Supervisors welcomed new members of the PDR Committee and provided the committee members with a copy of their written charge.

With no further action being required by the Board, on motion of Clark Powers, seconded by Bob Miller, Vice-Chairman, James L. Arrington adjourned the Workshop meeting, with the following vote recorded:

Eddie Dean	Absent
James L. Arrington	Aye
William L. Crigler	Absent
Bob Miller	Aye
Clark Powers	Aye

Date: November 26, 2007